

## **Assembly Bill No. 365**

### **CHAPTER 605**

An act to amend Sections 23 and 24 of, and to add Sections 23.6 and 33 to, the Food and Agricultural Code, and to amend Section 51201 of the Government Code, relating to agricultural lands.

[Approved by Governor October 6, 2005. Filed with  
Secretary of State October 6, 2005.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 365, Salinas. Local agencies: agricultural lands.

Existing law defines plants that are being produced by nurseries as "growing agricultural crops" for the purposes of any laws that pertain to the agricultural industry of the state.

This bill would state that plants and floricultural crops that are being produced by nurseries, whether in open fields or in greenhouses, shall be considered "growing agricultural crops" for the purposes of those laws and that those laws shall apply equally to greenhouses and open field nursery operations. This bill would make other related changes.

Existing law, the Williamson Act, provides that a landowner and a city or county may enter into a mutually beneficial contract to restrict the use of agricultural land by creating an "agricultural preserve," as defined, in order to preserve the limited supply of agricultural land necessary to the conservation of the state's economic resources. The act also defines other terms for purposes of its provisions, including "agricultural use."

This bill would revise the definition of "agricultural use" to include greenhouses and would define "greenhouse."

*The people of the State of California do enact as follows:*

SECTION 1. Section 23 of the Food and Agricultural Code is amended to read:

23. (a) Inasmuch as the planned production of trees, vines, rose bushes, ornamental plants, floricultural crops, and other horticultural crops is distinguishable from the production of other products of the soil only in relation to the time elapsing before maturity, plants and floricultural crops that are being produced by nurseries, whether in open fields or in greenhouses, shall be considered to be "growing agricultural crops" for the purpose of any laws that pertain to the agricultural industry of the state, and those laws shall apply equally to greenhouses and open field nursery operations.

(b) For the reasons stated in subdivision (a), a nursery where the primary activity is the planned production of horticultural crops, is a farm.

However, for the purposes of this section and any laws that pertain to farms in this state, a retail nursery is not a farm.

SEC. 2. Section 23.6 is added to the Food and Agricultural Code, to read:

23.6. The Legislature hereby finds and declares that greenhouse production of floricultural, ornamental, or other nursery and agricultural products in the state is a growing industry that provides valuable agricultural products and year-round employment for agricultural workers. The Legislature further declares that greenhouse production is an efficient self-contained production system that offers protections for the environment and allows for the use of conservation-oriented production technologies, including drip irrigation, water recycling, and hydroponics, and the use of energy conservation systems.

SEC. 3. Section 24 of the Food and Agricultural Code is amended to read:

24. It is hereby declared, as a matter of legislative determination, that the provisions of this section are enacted in the exercise of the power of this state for the purpose of protecting and furthering the public health and welfare. It is further declared that the floriculture and nursery industry of this state is affected with a public interest, in that, among other things:

(a) The production, processing, manufacture, and distribution of floriculture and nursery products constitute a paramount industry of this state which not only provides substantial and required revenues for the state and its political subdivisions by tax revenues and other means, and employment and a means of livelihood for many thousands of its population, but also furnishes substantial employment to related industries that are vital to the public health and welfare.

(b) Basic research and development for floriculture and the nursery industries contribute substantially to food production in this state which is essential to the welfare and health of its citizens.

It is also declared that the elimination of disorderly marketing of California floricultural and nursery products, and the development of new and larger markets through education, promotion and other means for these products, are affected with the public interest.

(c) All production of floriculture and nursery products in greenhouses shall be deemed equivalent to the production of floricultural products in open fields.

SEC. 4. Section 33 is added to the Food and Agricultural Code, to read:

33. “Greenhouse” means a structure covered with transparent or translucent materials for the purpose of admitting natural light and controlling the atmosphere for growing plants, including floricultural, ornamental, or other nursery and agricultural products.

SEC. 5. Section 51201 of the Government Code is amended to read:

51201. As used in this chapter, unless otherwise apparent from the context:

(a) “Agricultural commodity” means any and all plant and animal products produced in this state for commercial purposes.

(b) “Agricultural use” means use of land, including but not limited to greenhouses, for the purpose of producing an agricultural commodity for commercial purposes.

(c) “Prime agricultural land” means any of the following:

(1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

(d) “Agricultural preserve” means an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open-space use as defined in subdivision (o), or any combination of those uses and which is established in accordance with the provisions of this chapter.

(e) “Compatible use” is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. “Compatible use” includes agricultural use, recreational use or open-space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter.

(f) “Board” means the board of supervisors of a county which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(g) “Council” means the city council of a city which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(h) Except where it is otherwise apparent from the context, “county” or “city” means the county or city having jurisdiction over the land.

(i) A “scenic highway corridor” is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Department of Transportation as an official county scenic highway.

(j) A “wildlife habitat area” is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the protection or enhancement of the wildlife resources of the state.

(k) A “saltpond” is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of seawater in the course of salt production for commercial purposes.

(l) A “managed wetland area” is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

(m) A “submerged area” is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

(n) “Recreational use” is the use of land in its agricultural or natural state by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public. Any ancillary structures necessary for a recreational use shall comply with the provisions of Section 51238.1.

(o) “Open-space use” is the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the

solar evaporation of seawater in the course of salt production for commercial purposes, if the land is within:

- (1) A scenic highway corridor, as defined in subdivision (i).
- (2) A wildlife habitat area, as defined in subdivision (j).
- (3) A saltpond, as defined in subdivision (k).
- (4) A managed wetland area, as defined in subdivision (*l*).
- (5) A submerged area, as defined in subdivision (m).